



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Chas. A. Tosch  
County Auditor of Dallas County  
Records Building  
Dallas, 2, Texas

Dear Sir:

Opinion No. O-5949

Re: Whether the Road Bond Assumption Act of 1943, authorizes the Board of County and District Road Indebtedness to demand that counties refund eligible obligations which mature beyond the current year?

We acknowledge receipt of your letter of the 23rd inst. from which letter we quote the following:

"In this connection, I shall appreciate it, if you will advise whether the Road Bond Assumption Act of 1943 authorizes the Board of County and District Road Indebtedness to demand that counties refund eligible obligations which mature beyond the current year?

"Subsection (1) of Article 6674Q-7, Vernon's Statutes, provides that if a county or road district fails or refuses to refund any eligible debt, as requested by the State Board, then said obligations so required to be refunded, and all other obligations of said county or road district, shall cease to be eligible for participation in the county and road district highway fund until the requirements of the State Board with respect to refunding shall be complied with.

"But it is also provided by Subsection (g) of said Article:

"In this connection it is declared to be the intent of the Legislature that all contractual

duties and obligations which may exist between any county and/or defined road district and the owner or holder of the present outstanding indebtedness of any county and/or defined road district, shall not be in any manner disturbed or impaired and shall remain inviolate.'

"We do not question the power and authority of the State Board to require the refunding of eligible obligations maturing, say in 1944; but we do question the authority of the State Board to demand that the county attempt to redeem by refunding bonds maturing in future years.

"As you know, the redemption statute (Article 720) provides that such bonds may be redeemable 'at the pleasure of the county' and that such redemption 'may be fixed by the Commissioners' Court.'"

We think it is clear that the Board of County and District Road Indebtedness has the authority to require counties to refund eligible obligations maturing in future years if such obligations are optional and have been called for payment. Dallas County vs Lockhart, 128 T. 50, 96 S. W. (2nd) 60. Of course, the Board would not have authority to demand that bonds be refunded which are not optional and have not been called, but if the proceedings authorizing the bonds contain an option of redemption, or if they are redeemable under the provisions of Article 720, R. S. 1925, the Board of County and Road District Indebtedness may require the counties to refund them, and if the counties refuse to do so, the obligations so required to be refunded and all other obligations of such counties shall cease to be eligible for participation in the County and Road District Highway Fund until the requirements of the State Board with respect to refunding shall be complied with.

The Supreme Court in both the Cochran County case and the Bexar County case has construed Article 720 in such a manner as to make clear that bonds may be optional under the law regardless of the fact that the Commissioners' Court ignored the statute and attempted to issue them to mature serially and without option of prior redemption. The Attorney General's Department has held otherwise for the last

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twenty-five years, but since the Supreme Court has spoken in such unmistakable language, we shall accept its opinion and follow it.

You are therefore advised that in our opinion the State Board of County and District Road Indebtedness has the authority to require counties to refund any bonds which are optional either by reason of having reserved such option in the proceedings authorizing their issuance, or by reason of the provisions of Article 720, as such Article has been construed by the Supreme Court.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

/signed/  
C. F. Gibson  
Assistant

CFG:ned

APPROVED MAR. 31, 1944  
/s/ Geo. P. Blackburn  
ACTING ATTORNEY GENERAL  
OF TEXAS

APPROVED  
Opinion Committee  
By /s/ B. W. B.  
Chairman